

COOK INLET TRIBAL COUNCIL, INC.,	:	Order Docketing Appeal and
Appellant	:	Affirming Decision
	:	
v.	:	
	:	Docket No. IBIA 95-6-A
ACTING JUNEAU AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	October 17, 1994

Appellant Cook Inlet Tribal Council, Inc., seeks review of a July 29, 1994, decision of the Acting Juneau Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to accept and review appellant's application for a FY 1994 Indian Child Welfare Act (ICWA) grant as an off-reservation organization. Appellant's application was filed pursuant to a notice of availability of funds published in the Federal Register. See 59 FR 25542 (May 16, 1994). The Board of Indian Appeals (Board) received appellant's notice of appeal and statement of reasons on October 11, 1994, when they were transmitted to the Board by the Area Director, with whom they were filed under instructions contained in the program announcement and the Area Director's decision. For the reasons discussed below, the Board affirm the Area Director's decision. 1/

The Area Director's decision states that appellant's application was not reviewed because

[i]t did not contain: 1) Proof of liability insurance for fiscal year 1994-95; 2) Certification by a licensed accountant that the bookkeeping and accounting procedures that [appellant] uses or intends to use met existing Federal standards for grant administration and management specified at 25 CFR 23.46; 3) A copy of the organization's IRS tax exemption certificate; 4) A copy of the organization's current Articles of Incorporation for the applicable grant years.

1/ Both the Area Director's decision and the program announcement informed appellant that it could file a statement of reasons in support of its appeal either with the notice of appeal or within 30 days after the notice of appeal was filed. See Part III.G. Appellant's notice of appeal contained a statement of reasons. Although substantially more than 30 days passed before the Area Director transmitted the appeal and administrative record to the Board, no additional statement of reasons was contained in the materials received. The Board concludes that appellant's statement of reasons in its notice of appeal is the filing to which appellant was entitled under the program announcement, and that this appeal can be decided on the materials presently before it.

Appellant first argues that the items identified by the Area Director as missing are essentially housekeeping documents which it has not routinely provided in the past because it is a mature contractor as defined in regulations proposed to implement amendments to the Indian Self-Determination Act, 25 U.S.C. §§450-450m (1988 and Supps.) (P.L. 93-638). Appellant suggests that “BIA is now deliberately setting up barriers and roadblocks to tribal contracting by assuming a superior authority and nit-picking attitude against tribal contractors especially **mature contractors**. We believe that this is a ploy used against [appellant] to not award another ICWA grant and thereby diverting these funds to new contractors the Area Office has previously, albeit unofficially, selected” (Statement of Reasons at 1; emphasis in original).

Appellant's belief that it is a mature contractor under the definition of that term in regulations proposed to implement P.L. 93-638 is unavailing. Assuming arguendo, that P.L. 93-638 definitions would apply to funds granted under ICWA, proposed regulations have no force or effect. Yurok Tribe v. Acting Sacramento Area Director, 26 IBIA 45 (1994). The fact that appellant believes it meets a proposed definition of mature contractor for P.L. 93-638 purposes does not allow it to avoid meeting the requirements for submitting a complete application set forth in the ICWA program announcement.

Appellant provides no support for its suggestion that the Area Director discriminated against either it individually or off-reservation organizations generally. The Juneau Area Office was not the only BIA Area that declined to review an application filed by an off-reservation organization which had previously received ICWA funding on the grounds that the application was incomplete. See, e.g., Mid-America All-Indian Center, Inc. v. Acting Anadarko Area Director, 26 IBIA 246 (1994); Milwaukee Indian Health Board, Inc. v. Minneapolis Area Director, 26 IBIA 242 (1994).

The Board rejects appellant's contention that its application should be reviewed even though it was incomplete under the program requirements.

Appellant suggests that the Area Director should have notified it if its application was incomplete and given it an opportunity to provide the missing documents. Because appellant's application was filed on the last day, any documents submitted after that time would have been untimely. In reviewing decisions under competitive BIA grant program, including ICWA, the Board has consistently held that consideration of information presented after the date for filing an application would violate BIA's and the Board's duty to give fair and equitable consideration to all applications, by giving some applicants two opportunities to submit an acceptable application. See Native American Service Agency v. Eastern Area Director, 26 IBIA 186 (1994), and cases cited therein.

Most of appellant's statement of reasons is devoted to a discussion of the confusion over the proper place for filing its application. The Board finds that this discussion is not relevant to the issue on appeal. Appellant does not suggest that its application was incomplete because of the confusion over the place of filing. Furthermore, the application was not rejected because it was filed in the wrong place or was untimely. Based

on its review of other ICWA decisions made by the Juneau Area Director, the Board concludes that the Area Director has clearly indicated when an application was not reviewed because it was not timely filed. See Valdez Native Association v. Acting Juneau Area Director, 26 IBIA 253 (1994); Chugachmiut v. Acting Juneau Area Director, 26 IBIA 238 (1994).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Acting Juneau Area Director's July 29, 1994, decision is docketed and the decision is affirmed.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge